



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

CASE OF P.M. v. THE UNITED KINGDOM

(Application no. 6638/03)

JUDGMENT

STRASBOURG

19 July 2005

In the case of P.M. v. the United Kingdom,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Mr J. CASADEVALL, *President*,
Sir Nicolas BRATZA,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr K. TRAJA,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 24 August 2004 and 28 June 2005,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 6638/03) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a British national, Mr P.M. (“the applicant”), on 14 February 2003. The President of the Chamber acceded to the applicant’s request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Liberty, a non-governmental organisation in London. The United Kingdom Government (“the Government”) were represented by their Agent, Ms E. Willmott of the Foreign and Commonwealth Office, London. 3. The applicant alleged that he had been discriminated against as an unmarried father as he had not qualified for tax deductions in respect of maintenance payments paid to the mother of his daughter.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 24 August 2004, the Court declared the application admissible.

6. The Government, but not the applicant, filed observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1956 and lives in Durham.

8. Between 1987 and 1997, the applicant lived in a stable relationship with Miss D. They never married.

9. On 18 June 1991, Miss D. had a daughter. The applicant was registered as father on the birth certificate.

10. In October 1997, the applicant and Miss D. separated. On 29 June 1998, they entered into a Deed of Separation by which the applicant undertook to pay weekly maintenance of 25 pounds sterling (GBP) for his daughter. In the 1998-1999 tax year, he paid GBP 1,300 under the Deed. The sum increased over time in accordance with the applicant's increase in earnings. Since April 2002, the applicant has made weekly maintenance payments of GBP 35.

11. For the year of assessment 1997-1998, the applicant was granted relief on his self-assessment tax return for the maintenance payments made under the Deed. The Government state that this was an error by the Inland Revenue. In 1998-1999, the applicant put in a further claim to deduct these maintenance payments. This would have reduced his income tax liability by GBP 195.

12. By letter dated 21 December 2000, the Inland Revenue refused the claim for tax relief in respect of the maintenance payments: "because you were never married to your daughter's mother."

13. The applicant appealed against the refusal to a tax tribunal, namely the General Commissioners for the Division of Durham, invoking the provisions of the Convention.

14. A hearing took place on 11 July 2002. The applicant was unrepresented. On the morning of the hearing, counsel for the Inland Revenue presented him with a large file of the authorities on which the Inland Revenue sought to rely.

15. On 15 August 2002, the General Commissioners rejected his appeal, primarily on the ground that the Human Rights Act 1998 did not apply to the case as it had only come into force on 2 October 2000 after the tax year in question.

16. Miss D. married during the 1999-2000 tax year, on 24 July 1999.

II. RELEVANT DOMESTIC LAW

17. Section 347B of the Income and Corporation Taxes Act 1988, as it applied in the year of assessment 1998-1999, provided for the deduction of "qualifying maintenance payments". According to section 347B(1):

(1) In this section 'qualifying maintenance payment' means a periodical payment which -

(a) is made under an order made by a court in a member State or under a written agreement the law applicable to which is the law of a member State ...

(b) is made by one of the parties to a marriage (including a marriage which has been dissolved or annulled) either -

(i) to or for the benefit of the other party and for the maintenance of the other party, or

(ii) to the other party for the maintenance by the other party of any child of the family,

(c) is due at a time when -

(i) the two parties are not a married couple living together and

(ii) the party to whom or for whose benefit the payment is made has not remarried, and

(d) is not a payment in respect of which relief from tax is available to the person making the payment under any provision of the Income Tax Acts other than this section.”

18. Prior to amendment of the legislation in 1988, married couples who divorced or separated and unmarried couples who separated from one another were in the same position as regarded the deductibility of payments made under a Deed of Separation. The explanation for allowing the deduction to continue in respect of previously married couples as stated in a Press Release by Her Majesty’s Treasury was:

“A man maintaining his ex-wife (or vice versa) will get tax relief on the payments he makes, up to a limit equal to the difference between the married allowance and the single allowance ... This recognises the cost of helping to support an ex-wife and maintain a second household. On present experience, this limit will more than cover the majority of payments to ex-wives and ex-husbands.”

19. In the tax years after 1999-2000 the availability of this deduction has been withdrawn from all but those aged 67 years or more.

20. Since the Child Support Act 1991 (“the CSA”), it has been Government policy that parents (predominantly fathers) separated from their children should be responsible for their children’s maintenance, irrespective of their marital status. The CSA gives the Child Support Agency mandatory powers to compel an absent father to give information about his finances, to assess the amount of contribution and to compel enforcement of the contributions.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL NO. 1

21. The applicant complains that he was unable to deduct for tax purposes maintenance payments made in respect of his daughter as he was an unmarried father. The relevant provisions of the Convention provide:

Article 14 of the Convention:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

Article 1 of Protocol No. 1:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. The parties' submissions

1. *The applicant*

22. The applicant submitted that he was in an analogous position to married fathers and argued that the cases cited by the Government confused the existence of an analogous situation with the existence of an objective justification for any difference in treatment, citing instead *Sahin v. Germany* (no. 30943/96, 11 October 2001). Furthermore, he could claim to be under identical legal obligations as a married father as regarded his responsibilities to his child and thus in an analogous position for that reason.

23. The applicant argued that there was no objective and reasonable justification. The tax break might have been small to the Government but was a significant proportion of his weekly net earnings. He disputed that the historical background of the previous system provided any justification or explanation for why they did not provide the QMPA (qualifying maintenance payment allowance) in a non-discriminatory fashion to all couples, who having separated, had to bear the costs of two households. Nor had the Government explained convincingly why the fact of marriage provided a justification for treating child maintenance payments differently; the fact that there might exist an objectively justifiable basis for the difference in treatment in respect of spousal maintenance payments did not mean that there was also a justifiable basis for the difference in treatment in respect of child maintenance payments. A father was compelled by statute to provide maintenance for children irrespective of his married status. It was inconsistent to treat unmarried fathers the same as married fathers for the purpose of imposing financial obligations and then treat them differently by denying them tax breaks for those payments. He also doubted the validity of arguments that providing the tax break to married fathers after divorce somehow promoted the institution of marriage or that the margin of appreciation justified such blatant discrimination.

2. *The Government*

24. The Government accepted that the QMPA as a tax allowance set off against the liability to pay income tax fell within the ambit of Article 1 of Protocol No. 1. However, insofar as the applicant complained that the difference in treatment in this respect flowed from his unmarried status, he could not claim to be in an analogous position to a married couple (see *Lindsay v. United Kingdom*, application no. 11089/84, Commission decision of 11 November 1986, DR 49, p. 181; *Shackell v. United Kingdom*, no. 45851/99, (dec.) 27 April 2000). As in this case, the applicant was refused relief solely on the grounds of his unmarried status, the consequence of the couple's free choice not to marry, there was no differential treatment on a prohibited ground. They submitted that questions of paternity were irrelevant to the availability of the allowance, as the same applied to payments made by an unmarried person to another, where there were no children of the family. It was the relationship of marriage that was at the core of the legislation.

25. The Government argued that even if this was not the case there was an objective and reasonable justification for the difference in treatment. They referred to the historical development of the tax relief available for maintenance payments in the context of the taxation of married couples, in particular to maintain the status quo for the purposes of taxation for married couples after the breakdown of a marriage. They also submitted that it promoted the institution of marriage in conferring special rights

and privileges on those choosing to marry, even after marriage break-down and that aim had been recognised as legitimate and within the margin of appreciation by Convention case-law. Legal obligations adhered to marriage and its breakdown that did not apply in non-legally binding partnerships. It was incorrect to state that the difference penalised illegitimacy, as the recipient of maintenance was always not taxable, irrespective of birth status. The very limited tax allowance made available to ex-spouses but not to former cohabitants was therefore objectively justified and well within the margin of appreciation to be afforded to the democratically elected national legislature in a complicated area of economic and social policy.

B. The Court's assessment

26. For the purposes of Article 14 a difference in treatment between persons in analogous or relevantly similar positions is discriminatory if it has no objective and reasonable justification, that is if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Moreover, the Contracting States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (see *Camp and Bourimi v. the Netherlands*, no. 28369/95, § 37, ECHR 2000-X).

27. The Court notes the Government's arguments that this case is not about paternity/maternity but the married status of the parents. It is true that any person, not married to the mother of the child concerned, would not qualify for tax deductions for maintenance payments made. That said however, it is nonetheless the case that the applicant may claim to be treated differently as an unmarried father than a married father, though both are parents of the child to be maintained and under obligations to pay maintenance. This is not a situation where the applicant seeks to compare himself to a couple living in a subsisting marriage (see, for example, *Lindsay v. the United Kingdom*, cited above, where married and unmarried couples, taxed differently, were not found to be in a comparable position), but one where the married father has separated or divorced and is also living apart from the child of the family. Other persons, not parents, are not covered by the child support provisions and are generally in a different situation. This applicant differs from a married father only as regards the issue of marital status and may, for the purposes of this application, claim to be in an relevantly similar position.

28. The justification for the difference in treatment relied on by the Government is the special regime of marriage which confers specific rights and obligations on those who choose to join it. The Court recalls that it has in some cases found that differences in treatment on the basis of marital status has had objective and reasonable justification (see, for example, *McMichael v. the United Kingdom*, judgment of 24 February 1995, Series A no. 307-B, § 98, concerning legislation which did not grant automatic parental responsibility to unmarried fathers who inevitably varied in their commitment and interest in, or even knowledge of, their children). It may be noted however that as a general rule unmarried fathers, who have established family life with their children, can claim equal rights of contact and custody with married fathers (see *Sahin v. Germany* [GC], no. 30943/96, § 94, ECHR 2003-VIII). In the present case, the applicant has been acknowledged as the father and has acted in that role. Given that he has financial obligations towards his daughter, which he has duly fulfilled, the Court perceives no reason for treating him differently from a married father, now divorced and separated from the mother, as regards the tax deductibility

of those payments. The purpose of the tax deductions was purportedly to render it easier for married fathers to support a new family; it is not readily apparent why unmarried fathers, who undertook similar new relationships, would not have similar financial commitments equally requiring relief.

29. The Court concludes therefore that there has been a violation of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 in this case.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

30. The applicant also complained that he had no effective remedy before a national authority in respect of the discrimination.

31. Article 13 of the Convention provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

32. The applicant argued that even if the discrimination flowed from primary legislation it would nonetheless have been possible to provide some sensible intermediate form of relief and pointed to the later introduction of the Human Rights Act 1998, which provided for a declaration of incompatibility of legislation and the European Union provisions which had the effect of setting aside domestic primary legislation which conflicted with EC law.

33. The Government submitted that the applicant’s complaints were directed against primary legislation in which respect Article 13 did not guarantee a remedy according to the Court’s case-law.

34. The Court reiterates that Article 13 does not go so far as to guarantee a remedy allowing a Contracting State’s primary legislation to be challenged before a national authority on grounds that it is contrary to the Convention (see *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, p. 47, § 85; *Willis v. United Kingdom*, no. 36042/97, § 62, ECHR 2002-IV). The discrimination in this case derived from the Income and Corporation Taxes Act 1988. The facts of the present case therefore disclose no violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

36. The applicant referred to his claim, in his application form, for full compensation for the loss of the benefit of the deduction amounting to not less than 195 pounds sterling (GBP).

37. The Government made no comment.

38. The Court finds that the loss of the tax deduction may be regarded as pecuniary damage flowing from the violation found in this case. It awards 292 euros (EUR).

B. Costs and expenses

39. The applicant claimed GBP 6,143.54 for legal costs and expenses, inclusive of value-added tax (VAT) which included over 23 hours of work by a solicitor/employed barrister and by a trainee solicitor and a sum for future work if necessary.

40. The Government considered that a GBP 100 hourly rate for a trainee solicitor was excessive and should be reduced by 50% and that the six hours charged for the claim for just satisfaction was not necessary.

41. The Court sees some substance in the Government's doubts as to the hours claimed. Having regard to the procedure adopted in this case, the level of complexity and the costs actually and necessarily incurred, the Court awards EUR 7,900, inclusive of VAT.

C. Default interest

42. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1;
2. *Holds* that there has been no violation of Article 13 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts to be converted into pounds sterling at the date of settlement:
 - (i) EUR 292 (two hundred and ninety two euros) in respect of pecuniary damage;
 - (ii) EUR 7,900 (seven thousand nine hundred euros) in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.
Done in English, and notified in writing on 19 July 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELENS-PASSOS
Deputy Registrar

Josep CASADEVALL
President